

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1633 OF 2003
IN
SUIT NO.1505 OF 1999

Garden Finance Ltd.	...Plaintiffs
Vs.	
Credential Finance Ltd.	...Defendants
And	
M/s. Sujana Steels Ltd.	
M/s. Sujana Industries Ltd.	...Applicants

Mr.G.S.Hegde with Mr. c.M. Lokesh i/b. M/s. G.S.
Hegde & Associates for Applicants
Mrs. Farzana Behramkamdin i/b. M/s. Wadia Ghandy &
Co. for Plaintiffs

CORAM: SMT.R.S.DALVI, J.
DATED: 5TH AUGUST, 2005

P.C.

1. This Notice of Motion is taken out by the Applicants who are the acceptors of the suit bills of exchange for setting aside a decree on admission by way of consent terms filed by the Parties to the suit as well as the Applicants on 13th December, 1999 and for other incidental reliefs. The execution of the said bills of exchange is not denied. The bills of exchange have been drawn by one Explair Electrical Pvt. Ltd. upon the Defendants. They have been accepted by the Applicants. The Defendants have endorsed the bills of exchange to the Plaintiffs. The Plaintiffs are the holders in due course the Applicants are primarily liable to the Plaintiffs, on the bills of exchange as acceptors thereof.

2. Strangely the suit has been filed only against the Defendants and not against the Applicants.

3. However, prior to as well as after the decree of admission/consent terms in the suit the liability of the Applicants has been admitted by the Applicants. The Admissions are seen by way of express statements made by them in certain correspondences as well as by way of actually drawn cheques in favour of the Plaintiffs.

4. The Applicants themselves by their letter dated 28th August 1999, Exhibit-D to the affidavit in reply informed to the Defendants that they had sent two cheques favouring the Plaintiffs.

5. Under the letter dated 31st August, 1999 Exhibit-B1 to the affidavit in reply to the Notice of Motion, 3 months prior to the decree of admission/consent terms, the Defendants had written to the Plaintiffs that the applicants had decided to directly make payments towards the outstanding dues against the said bills to the Plaintiffs as the holders in due course of the bills of exchange, re-discounted by the Plaintiffs. Pursuant to the said letter two cheques dated 1st September, 1999 came to be signed by the Applicants in favour of the Plaintiffs and sent to the Defendants. The Defendants

sent the said cheques to the Plaintiffs. The execution of these cheques have not been denied. However the Plaintiffs were requested not to encash the said cheques.

6. 3 months thereafter on 13th December, 1999 consent terms came to be filed. These consent terms were initially executed on 13th September, 1999. They have been signed not only by the Parties to the suit who are respectively the holders in due course and the payee under the bills of exchange but also by the acceptors of the bills of exchange being the Applicants herein.

7. The Plaintiffs have produced the certified copy of the consent terms/ decree on admission. The initial consent terms dated 13th September, 1999 show that that date has been struck off and the date 13th December, 1999 has been inserted. The title ''Consent Terms'' has been struck off to show ''Decree on Admission''. The other terms of payment remained unchanged.

8. Under the consent terms a decree on admission was obtained for Rs.96,43,936/-. However, upon payment of Rs.63 lakhs by the instalments shown therein the decree was to be marked fully satisfied. The lesser amount agreed under the said decree on admission not having been paid, the decree for the

entire amount came to be executable.

9. The Plaintiffs entered into further correspondence upon the Defendants having made commitment for payment of the instalments mentioned in the decree of admission. The Plaintiff sought to execute a decree thereupon. The applicants have taken out this Notice of Motion to set aside the decree of admission.

10. This is on the ground that they have not signed the decree on admission and that the signature of their Director is forged. This statement has not been otherwise substantiated. It is contended on their behalf that the statement made by them on oath that their Director's signature is forged must suffice to set aside the decree on admission. The Advocate for the Applicants has drawn my attention to the letter of the Plaintiffs which shows that these consent terms have not been signed in presence of the Plaintiffs but only in the presence of Defendants' Director and in the office of the Defendants. He contends that therefore, it cannot be stated that the consent terms was signed by all the parties whose signature appears thereon, and hence the decree must be set aside.

11. Had this consent terms been the only document signed by the Applicants, that statement could have

been accepted. However, in this case there has been correspondence prior to as well as after the execution of the consent terms by the Applicants as the acceptors of the bills of exchange. That correspondence has been annexed to the affidavit in reply of the Applicants. The earlier correspondence shows the desire of the Applicants to make payment directly to the Plaintiffs. It also shows the actual payment sought to be made but later which was sought to be held up. That is not enough. Even after the execution of the consent terms the Applicants have written their letter to the Defendants showing "their endeavour to meet the repayment schedule as per the consent terms". This is shown in their letter dated 20th July, 2000 marked Exhibit-E to the affidavit in reply. The letter further shows excuses for the delay and a request to bear with the Applicants. It further shows that they would shortly overcome the temporary strain on their cash flow and that they would "surely repay them their dues as committed" and "accept the repayment schedule as per the consent terms". This commitment is therefore, as per the consent terms. This circumstantial evidence therefore, belies their case that the signature of their Director is forged.

12. The affidavit has been served upon the Applicants' Advocate on 4th July, 2005, under cover of the letter of the Applicant's Advocate letter dated 3rd July, 2005. It is endorsed by the Defendant's

Advocate's office on 4th July, 2005.

13. It is seen that the case on oath of the Applicants is not true. The Applicants are even otherwise primarily liable under the bills of exchange. That liability is expressly accepted by the Applicants. It is sought to be discharged and admitted even after the execution of the Consent Terms.

. Hence the Applicants cannot resile from such express legal liability.

. Notice of Motion is dismissed. NOC.

(SMT.R.S.DALVI, J.)